SUPREME COURT OF QUEENSLAND

CITATION:	*R v East* [2021] QCA 54
PARTIES:	**R** **v** **EAST, Daniel Alan** (applicant)
FILE NO/S:	CA No 221 of 2020 DC No 2562 of 2019
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Brisbane – Date of Sentence: 19 June 2020 (Loury QC DCJ)
DELIVERED ON:	26 March 2021
DELIVERED AT:	Brisbane
HEARING DATE:	12 February 2021
JUDGES:	Fraser and McMurdo JJA and Boddice J
ORDERS:	**1. Leave to appeal be granted.** **2. The appeal against sentence be allowed.** **3. On each count, the applicant be sentenced to six years' imprisonment, each sentence to be served concurrently with the other.** **4. The applicant be eligible for parole after serving 18 months of those sentences.** **5. The one day the applicant served in custody, between 17 August and 19 August 2015, be time served in respect of those sentences.**
CATCHWORDS:	CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – PARTICULAR GROUNDS OF APPEAL – IMPROPER ADMISSION OR REJECTION OF EVIDENCE – GENERALLY – where the applicant pleaded guilty to two counts of fraud to the value of $30,000 or more – where the applicant was sentenced to six years' imprisonment on each count, to be served concurrently, with a parole eligibility date fixed after having served 20 months of that sentence – where the applicant submits that the sentencing Judge erred in the determination of disputed facts on sentence – where the applicant gave evidence at the contested hearing – where the applicant's counsel stated that it had been agreed between the prosecution and defence that the sentence hearing proceed on the basis that none of the

applicant's evidence would be taken into account, except for specified purposes – where the parties agreed for the sentencing hearing to proceed before the same sentencing Judge on the basis that the evidence of the applicant be disregarded, other than for specified purposes – where that course was expressly accepted by the sentencing Judge – whether use of the applicant's evidence was contrary to the procedure agreed to by the parties and accepted by the sentencing Judge

CRIMINAL LAW – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – GROUNDS FOR INTERFERENCE – PARITY BETWEEN CO-OFFENDERS AND OTHER RELATED MATTERS – where the applicant submits that the sentencing Judge erred in failing to consider parity when imposing the applicant's sentence – where the applicant submits the failure to consider parity resulted in the imposition of a sentence which left the applicant with a justifiable sense of grievance – where the respondent submits that the sentencing Judge did not err in relation to the parity principle – whether a sentence of six years' imprisonment represents a proper reflection of the differing roles of the applicant's co-offenders in their joint criminal enterprise

R v Crouch; R v Carlisle [2016] QCA 81, cited
R v Henderson [2014] QCA 12, cited
R v KAX [2020] QCA 218, cited
R v Kelly [2016] QCA 293, cited

COUNSEL: S Holt QC, and R Taylor, for the applicant
M A Gawrych for the respondent

SOLICITORS: Nyst Legal for the applicant
Director of Public Prosecutions (Queensland) for the respondent

[1] **FRASER JA:** I agree with the reasons for judgment of Boddice J and the orders proposed by his Honour.

[2] **McMURDO JA:** I agree with Boddice J.

[3] **BODDICE J:** On 19 June 2020, the applicant, Daniel Alan East, pleaded guilty to two counts of fraud to the value of $30,000 or more.

[4] On 15 October 2020, the applicant was sentenced to six years' imprisonment on each count, to be served concurrently, with a parole eligibility date fixed after having served 20 months of that sentence.

[5] The applicant seeks leave to appeal those sentences. Two grounds of appeal are relied upon by the applicant. First, that the sentencing Judge erred in the determination of disputed facts on sentence. Second, that the sentencing Judge failed to consider parity and, as a result, imposed an excessive sentence. It is conceded that, should proposed ground one fail, there is no basis for ground two to succeed.

Background

[6] The applicant was born on 28 August 1982. He was aged 31 and 32 at the commission of the offences and 38 at sentence. He had no prior criminal history.

[7] The applicant's sentence hearing proceeded on a contested basis. Whilst accepting that he was guilty of the offences, the applicant did not accept that he was a part owner of the business which engaged in the fraudulent conduct or that he was aware that the products, the subject of that fraudulent conduct, were incapable of operating as indicated to customers.

Offences

[8] The applicant was charged with having committed the offences with three co-accused, Stiofan Ceitinn, Aaron Colin East and Neil John McKenny.

[9] Ceitinn and Aaron East were each sentenced to eight years' imprisonment for each of the offences, with parole eligibility dates set after serving two and a half years of those sentences. McKenny was sentenced to five and a half years' imprisonment, with parole eligibility set at 20 months.[1]

[10] Each count of fraud was committed between 1 January 2014 and 18 August 2015. Each arose out of a "boiler room" enterprise. The objective was to dishonestly induce customers, through a telemarketing scheme, to buy software. The applicant and his co-accused were participants in that joint criminal enterprise.

[11] The criminal enterprise was related to a separate, but very similar, operation involving McKenny, and two other men. Those three persons were the founding partners of that separate scheme. It was accepted that McKenny had devised and established the enterprise, the subject of the applicant's offending.

[12] The sentence hearing proceeded on the basis that the applicant was initially employed in the criminal enterprise as a commission salesman but was promoted to sales manager during the period of the offences.

Sentence hearing

[13] The applicant's pleas of guilty were entered on the basis of a schedule of facts which, in large measure, was not disputed by the applicant.

[14] Facts not in dispute included that the enterprise had sold two different software packages, one being a sports arbitrage betting package and the other an automatic gold trading package; that the sales activity for the first package had resulted in 150 complainants purchasing the software for a little under $2 million; that the second package had resulted in 10 customers purchasing that package for a sum a little over $117,000; that each of the co-accused received significant sums from the operation of the enterprise. Aaron East received a little over $300,000. The applicant received $282,517.06. Ceitinn received $230,728.61. McKenny received $170,444.44.

[15] The sentence hearing proceeded on the basis that the applicant admitted that, in his sales position, he made or abetted the making of false representations to prospective customers as set out in Schedules A and B to the Statement of Facts; that he knew

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1 It was accepted at sentence that this sentence was not a useful yardstick as McKenny was also sentenced for other offending and had undertaken to give evidence. AB450 – 451; para 12.

other salespersons in his team had made similar false representations; that those false representations were made in order to induce potential customers to purchase the programs; and that customers who did in fact purchase the programs relied on those representations.

[16] The applicant did not accept that:

> "5.1 He knew 'the software would and could not function as represented before sale'.
>
> 5.2 He knew 'the software had very little value'.
>
> 5.3 He knew that this 'enterprise achieved its purposes,' (…), 'by using a specialised business structure, (the structure), to sell the software to large numbers of people over several years preceding and including the period alleged'.
>
> 5.4 He is a 'principal offender' or was 'a part-owner'.
>
> 5.5 He had any involvement 'in the control of' the companies perpetrating the frauds.
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> 5.6 He had any knowledge of the flaws in the program or on how its capacity to work was compromised as alleged… or at all.
>
> 5.7 He had 'direct or indirect access to accounts operated by the corporate entities'.
>
> 5.8 The software was flawed, in that it presented information about gold prices on an incorrect time scale which had no contemporaneous connection with real world commodity trading.
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> 5.9 He 'knew that the software being sold had been developed or adopted during the operations of the enterprise in an earlier incarnation of the enterprise and had been successively renamed, without material alteration, including during the periods alleged'."[2] (References omitted)

[17] The applicant gave evidence at the contested hearing. After extensive cross-examination, the sentencing Judge advised the applicant's counsel that the applicant's evidence amounted to a denial of responsibility for the offending in its entirety, such that his pleas of guilty would not stand unless she disregarded that evidence.

[18] After taking instructions, the applicant's counsel stated that it had been agreed between the prosecution and defence that the sentence hearing proceed on the basis that none of the applicant's evidence be taken into account, except for specified matters, namely, his family and personal antecedents; the circumstances surrounding his incapacity to continue as a professional athlete, the circumstances of his getting involved in telemarketing and sales and his lack of education in areas of design and workings of the program; "and nothing further".[3]

[19] The sentencing Judge agreed to proceed with the sentence hearing on that basis.

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2 AB343-344.

3 AB258/45.

Sentencing remarks

[20] The sentencing Judge acknowledged that the applicant had pleaded guilty. The offending was described as having taken place over a period of some 20 months and involved the participation of the applicant and his co-accused in a joint criminal enterprise, the objective of which was to induce citizens, by dishonest means, to purchase software about which a broad range of false representations were made.

[21] The sentencing Judge described the fraud as very sophisticated and involving software which would work in the way designed in the real world but was of restricted use. The level of sophistication was revealed by the use of fake websites and forums; fake reviews and magazine references; and fake competitor websites and brochures created and distributed containing fabricated performance figures. Scripts were also created for use by sales personnel.

[22] The sentencing Judge observed that the disputed facts related to the applicant's involvement in the criminal enterprise. The sentencing Judge found that the applicant was involved in a lesser role than that of Ceitinn and Aaron East. However, her Honour said:

> "You gave evidence before me. Your evidence was entirely inconsistent with the plea that you had entered. In particular, you denied being a participant in this criminal enterprise. In those circumstances, your plea could only stand if I rejected your evidence. You have provided instructions that I ought to ignore your evidence.
>
> I consider your evidence as to the enterprise to have been entirely devoid of any credit. You are an arrogant man who, at times, resorted to your salesman techniques. I found you to be entirely transparent in that regard and unconvincing. You attempted to distance yourself from virtually every facet of the enterprise. Your evidence was internally inconsistent. You, from time to time, answered in a way that suggested that you thought you were more clever than any other person in this courtroom, particularly the Crown prosecutor. When you were unable to provide credible explanations for not querying certain matters that came to your knowledge, you would resort to attempt to appear obtuse. To be clear, I do reject your evidence as it touched on matters that relate to the criminal enterprise. What did come through from your evidence is that you are not, in my view, in any way remorseful for your conduct or the activities of the enterprise."[4]

[23] The sentencing Judge found that, having regard to the applicant's acceptance that he was a participant in a joint criminal enterprise, there was to be attached a criminal liability to all parties involved, regardless of the level of involvement played by each party. Each shared a common purpose, to induce people by dishonest means into buying software.

[24] The sentencing Judge found that the evidence did not reach a level of satisfaction such as to conclude, as a fact, that the applicant was a part-owner of the business. However, the applicant was an integral part of the enterprise, having personally

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4 AB278/35 – 279/7.

received more than $280,000 representing the second highest money earner in the business. The applicant managed a team of salespeople who were highly successful. Without that level of successful salesmanship, the enterprise would not have had the ability to defraud so many citizens of so much money.

[25] The sentencing Judge accepted that the software would work and could return profits but would not produce the returns that were marketed. The sentencing Judge found that, whilst the applicant may not have known "why the software did not return the profits as marketed (because bookmakers obstructed the wagers) nonetheless … that you knew that the software did not perform to the level it was being marketed at. That is, you knew that it would not return anywhere near the profits that you were indicating to potential customers as being capable of earning".[5]

[26] The sentencing Judge found that there was a clear appreciation by the applicant that the brochures were each new incarnations for the trading name for the software and the business was, to a large extent, identical; that the applicant had acknowledged the danger that customers might see such identical brochures and recognise it as a scam and post such on line; that the applicant had expressed concern to sales staff that they not call existing customers; that the applicant was aware of losing potential customers; and that he understood that the selling of the software was a scam.

[27] The sentencing Judge found, as a fact, that the applicant understood the software being sold "did not return the very significant profits that customers were led to believe" and that, in that sense "it did not function as represented for sale".[6]

[28] The sentencing Judge accepted that the applicant had been on bail for approximately five years, involving a limitation on his liberty, but found the delay was a result of a number of reasons, including the complex nature of the investigation and the way in which the criminal enterprise operated to deliberately avoid detection. The applicant, as a participant in the criminal enterprise, was liable for that subterfuge.

[29] Further, upon arrest, the applicant had refused to be interviewed, providing no assistance in unravelling the misinformation created by the enterprise; and the applicant had given instructions to cross-examine witnesses at committal. Delay had also been occasioned by the need to accommodate a lengthy trial listing. Further, the applicant had withdrawn his instructions and changed solicitors.

[30] The sentencing Judge accepted that the applicant had entered into negotiation with the Crown well before the trial but said:

> "Contrary to your evidence that the Crown niggled over minor details, adding to the delay, it seems to me, on the basis of the evidence you gave, you are unwilling to accept responsibility for your role in this criminal enterprise. You provided a statement to the prosecution in May of this year in an attempt to reduce your sentence. If it bore any resemblance to the evidence you gave before me, it could only have served to undermine the prosecution's case against others.

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5 AB280/11 – 15.

6 AB280/36-37.

> You chose to give evidence in this matter over the last two days which has caused a further delay in circumstances where, ultimately, you instruct that I should ignore your evidence."[7]

[31] Notwithstanding those observations, the sentencing Judge accepted that the delay of five years was relevant as the applicant had, since the offending conduct, found employment and not committed any further offences other than one irrelevant breach of bail. Those factors demonstrated rehabilitation and an unlikelihood of reoffending in the future. His pleas of guilty had also avoided what would have been a lengthy trial, resulting in significant savings to public resources.

[32] The sentencing Judge found that the applicant's evidence at the sentencing hearing exhibited not one hint of remorse for his involvement. Consistent with that lack of remorse, were statements made to a psychologist in November 2018 to the effect that the applicant was selling a genuine product or program that he assumed was worthwhile and that he had no idea of a fraud being committed. A similar statement had been made to the same psychologist in July 2020, with an assertion that the applicant was being exploited by others.

[33] The sentencing Judge accepted that the psychologist's report revealed that the applicant had suffered from anxiety and depression and had expressed concern about the impact of incarceration upon his wife and family. The psychologist had also opined, importantly, that the applicant was unlikely to reoffend, an opinion accepted by the sentencing Judge.

[34] The sentencing Judge also accepted that the applicant's wife was vulnerable and herself suffering from depression, anxiety and stress. Those factors, together with the responsibility for two young children, meant that incarceration would have an impact on the applicant's wife and children. However, that impact on the applicant's family was a consequence of the applicant's offending.

[35] The sentencing Judge stated that, whilst a poor impression of the applicant's character was developed from when he gave evidence, the sentencing Judge was prepared to act upon the statements made in references as to the applicant's character. They described the applicant as a decent, honest, trustworthy, well regarded member of the community. The applicant's current employer also spoke highly of the applicant's work ethic and described the applicant as having made a valuable contribution to the business.

[36] The sentencing Judge observed that some of the referees referred to the applicant's remorse but found that there was no suggestion of any remorse in the applicant's evidence at the hearing. The sentencing Judge did accept that the applicant was sorry, ashamed and embarrassed for the scandal for his family and for the impact his behaviour would have on his wife and children. The sentencing Judge accepted that the applicant was devoted to his family and that he had been a gifted sportsperson, with Olympic dreams which were unable to be realised as a consequence of a back injury which required surgery. It was in that context that the applicant had found himself unemployed, and had accepted employment offered by his brother, Aaron East, as a salesman in the criminal enterprise.

[37] Finally, the sentencing Judge accepted that the applicant would be required to serve his sentence during the current pandemic which would, from time to time, involve

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7 AB281/17-26.

harsher conditions. That was a fact the sentencing Judge would take into account in determining the appropriate sentence.

[38] Having found that the applicant's involvement in a criminal enterprise was significant and integral to its ability to defraud so many people of so much money, the sentencing Judge found that considerations of general deterrence, punishment and community denunciation were paramount and that a just sentence required the applicant to serve time in actual custody.

Applicant's submissions

[39] The applicant submits that two matters led to error in the sentencing Judge's findings as to the disputed facts.

[40] First, the sentencing Judge expressly took into account parts of the applicant's evidence in relation to his culpability, despite having confirmed that the hearing would proceed on the basis that his evidence would be disregarded in determining the disputed facts. The use of the applicant's evidence went beyond findings in relation to credit and remorse, and constituted a lack of procedural fairness.

[41] Second, the Crown case as to the contested facts was circumstantial. It was, therefore, necessary for the evidence to be considered as a whole rather than select individual pieces of evidence which may prove little individually. The sentencing Judge failed to consider key aspects of the evidence, including evidence that sales staff were intentionally quarantined from the truth about the product; that directors were appointed as patsies; and that the applicant had no involvement in and access to bank accounts. The sentencing Judge also impermissibly relied upon recordings which contained only one side of a conversation.

[42] The applicant further submits that the sentencing Judge erred in failing to consider parity when imposing the applicant's sentences. Parity was an issue having regard to multiple co-accused and differing involvement of those participants in the criminal organisation. The failure to consider parity resulted in the imposition of a sentence which left the applicant with a justifiable sense of grievance.

Respondent's submissions

[43] The respondent submits the sentencing Judge did not err in having regard to the fact that the applicant had given evidence and his demeanour when giving that evidence. There was no procedural unfairness in having regard to those circumstances.

[44] Further, a consideration of the evidence as a whole amply supported the sentencing Judge's conclusion that the applicant was aware that the software did not perform as represented. That conclusion followed from the applicant's acceptance that he was part of a criminal enterprise to dishonestly induce persons in a telemarketing scheme to buy software and the applicant's acceptance that he had made, and abetted others to make, false representations about the performance of that software. The only rational inference on the evidence was that the enterprise was a scam. That conclusion was not altered by reference to the recording that contained only one side of the conversation.

[45] The respondent submits there was no basis to find that the sentencing Judge failed to consider key parts of the remaining evidence. The sentencing Judge expressly relied on that evidence in concluding that the Crown had not established, to the requisite standard, that the applicant was a part owner of the enterprise.

[46] The respondent further submits that the sentencing Judge did not err in relation to the parity principle. The sentences imposed on the applicant were not disparate, unreasonable or plainly unjust and did not give rise to any justifiable sense of grievance, having regard to the sentences imposed on his co-offenders. Each had different levels of criminality. The sentencing Judge correctly identified the applicant's role within that enterprise, namely, that as sales manager he was an integral part of the enterprise, without whose efforts the enterprise would not have been able to defraud so many citizens of so much money.

Consideration

Ground One

[47] Although the sentencing hearing was conducted on the basis that the applicant accepted his guilt of the offence, but disputed his level of involvement within the criminal enterprise and his knowledge of the product's inability to perform as marketed, the sentencing Judge rightly concluded that the evidence given by the applicant at that hearing constituted a denial of criminal responsibility, such that the pleas of guilty could not stand in the face of that evidence.

[48] Thereafter, the parties agreed for the sentencing hearing to proceed before the same sentencing Judge on the basis that the evidence of the applicant be disregarded, other than for specified purposes. That course was expressly accepted by the sentencing Judge.

[49] However, the sentencing Judge had regard to aspects of the applicant's evidence for the purpose of adverse findings as to remorse.

[50] Such a use of the applicant's evidence was contrary to the procedure agreed to by the parties and accepted by the sentencing Judge. That being so, an important fact was determined in a way which gives rise to a lack of procedural fairness. That is an error warranting a re-exercise of the sentencing process.

[51] This conclusion renders it unnecessary to formally consider Ground Two, although principles of parity will be relevant in the re-exercise of the sentencing discretion.

Re-sentence

Disputed facts

[52] A consideration of the evidence led at the sentencing hearing, absent any consideration of the applicant's evidence, supports a conclusion that, whilst the applicant played a key role in the criminal enterprise, initially as a successful salesperson and subsequently as sales manager, the evidence as a whole is insufficient to establish to the requisite high standard that the applicant was a part owner of the business. Not only were his co-offenders initiators of an earlier, similar scheme, they were plainly the persons in ultimate control of the criminal enterprise.

[53] The fact that the applicant received the second highest amount from the proceeds of the sales of the software does not alter that conclusion. The receipt of such funds is entirely consistent with the applicant's position as a successful salesperson and, subsequently, sales manager of a profitable criminal enterprise operated over almost two years.

[54] The second disputed fact is to be determined in the context of the applicant's express acceptance that he had made, and assisted others to make, representations as set out in Schedules A and B to the Statement of Facts, which he knew to be false. Those representations, in large measure, dealt with the attributes and advantages of the software packages being marketed as part of the joint criminal enterprise.

[55] The applicant's express acknowledgment that he was aware those representations were false of itself supports a finding that the applicant was aware that the software programs did not meet their marketed attributes.

[56] Against that background, the fact that the applicant believed the software packages were functional does not detract from the gravemen of the applicant's criminal behaviour, namely, that he was knowingly making, and assisting others to make, false representations to customers to induce those customers to purchase the software, relying on those representations. The applicant accepted he made the over-representations in Annexure B, which expressly included representations as to the profits to be generated from the use of the software (1.1(u) – (qq) and 1.3(h) – (j)).

[57] An acceptance that the applicant knew of the falsity of the representations as to the profitabilities of those packages amply supports a conclusion, to the requisite standard set out in s 132C of the *Evidence Act*, that the applicant knew that the software "would and could not function as represented before sale".[8]

[58] The remaining disputed facts as to the applicant's state of knowledge involve specialised knowledge of the intricacies of the programs. Having regard to McKenny's evidence as to the steps taken to isolate others in the business from the specifics of the software's limitations, I am not satisfied, to the requisite standard, that the applicant knew each of those matters. However, the lack of knowledge of those matters does not detract from the gravemen of his criminality, having regard to his acceptance of the falsity of representations as to the profitabilities of those packages.

Sentence

[59] The applicant is properly to be sentenced on the basis that he was a participant in a joint criminal enterprise which, over an extended period, fraudulently obtained large sums of money from members of the public through selling software packages on the basis of a reliance upon what were known to be false representations. The applicant's involvement was integral to that enterprise, as both a successful salesperson and its sales manager. The applicant personally received significant profits from those fraudulent activities, although he did so in his role as salesperson and sales manager, not as a part owner of that enterprise.

[60] Such conduct warrants the imposition of a sentence which contains within it a just recognition of the principles of deterrence and denunciation.

[61] As against that, the applicant committed the offences in circumstances where he had no relevant criminal history and had otherwise been an upstanding member of his community. Further, some five years had elapsed since the commission of those offences during which the applicant had not reoffended and had re-established himself as a working member of society.

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8 AB256/7-8.

[62] The applicant is also to be sentenced having regard to his cooperation, as shown by his pleas of guilty, with a resultant saving of significant Court time and resources, and an acknowledgement that he had developed anxiety and depression and that incarceration would significantly impact on his family. The circumstances of the ongoing pandemic are also likely render any time served in custody more difficult.[9]

[63] Balancing those various factors, the applicant's criminality is properly reflected in a sentence of six years' imprisonment. Such a sentence is in accordance with the relevant yardsticks.[10] Whilst each of those yardsticks involved offenders who had orchestrated dishonest schemes, resulting in large sums of moneys being paid by multiple complainants, the additional criminality in their conduct was reflected in substantially higher sentences of imprisonment than six years.

[64] Whilst the applicant was not an initiator of the dishonest criminal enterprise, he was an integral player as a successful salesperson and subsequent sales manager, whose fraudulent conduct was central to the receiving of large sums of money from multiple complainants in that joint criminal enterprise. That conduct was engaged in knowing that the representations being made by him and others on the sales team were false. The applicant generated a significant sum of money personally as part of that dishonest conduct. A sentence of five years' imprisonment would not properly reflect the overall criminality of the applicant's conduct.

[65] A sentence of six years' imprisonment also represents a proper reflection of the differing roles of the applicant's co-offenders in that joint criminal enterprise. The significantly higher sentences imposed on Ceitinn and Aaron East reflected their higher criminality as operators of the dishonest schemes. The lesser sentences imposed on McKenny were obviously affected by factors such as increased cooperation.

[66] The sentences imposed on others involved in aspects of the businesses[11] are not comparable yardsticks. Merlehan pleaded guilty to one count of fraud to the value of $30,000 or more, with her criminality being substantially less having regard to the limited number of sales for which she was responsible and the significantly smaller amount of money personally received by her for that criminal conduct. Podger Aghajani and Pfaff each pleaded guilty to lesser offences in the Magistrates Court.

[67] The applicant's cooperation by pleading guilty, together with his personal circumstances and the fact that, for an extended period since the offending conduct, he had re-established himself back into society without the commission of further offences, supports the imposition of an earlier parole eligibility period. Such a conclusion is also supported by considerations of the consequences of the ongoing pandemic, although those consequences cannot overwhelm the obvious need for the applicant to serve a substantial period of actual imprisonment to reflect his overall criminality. Any other sentence would be an affront to society.

[68] Balancing those mitigating factors, I would set a parole eligibility date after the applicant had served 18 months of those sentences of imprisonment.

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9 *R v KAX* [2020] QCA 218.

10 *R v Kelly* [2016] QCA 293; *R v Henderson* [2014] QCA 12; *R v Crouch; R v Carlisle* [2016] QCA 81.

11 Merlehan, Podger, Aghajani and Pfaff.

Orders

[69] I would order:

1. Leave to appeal be granted.
2. The appeal against sentence be allowed.
3. On each count, the applicant be sentenced to six years' imprisonment, each sentence to be served concurrently with the other.
4. The applicant be eligible for parole after serving 18 months of those sentences.
5. The one day the applicant served in custody, between 17 August and 19 August 2015, be time served in respect of those sentences.